

1 case since the Court filed its scheduling order on December 11,
2 2009. The Local Civil Rules of the United States District Court
3 for the District of Arizona provide that "cases which have had
4 no proceedings for six (6) or more months may be dismissed by
5 the Court for want of prosecution. Notice shall be given to the
6 parties that such action is contemplated, and a status hearing
7 shall be scheduled where the parties may show good cause why
8 such action should not be taken." Local Civil Rule 41.1, United
9 States District Court for the District of Arizona. On June 22,
10 2010, the Court ordered Plaintiff to show cause why this matter
11 should not be dismissed for his failure to prosecute his claims.
12 The Order to Show Cause was returned as undeliverable.

13 Plaintiff has a general duty to prosecute this case.
14 Fidelity Phila. Trust Co. v. Pioche Mines Consol., Inc., 587
15 F.2d 27, 29 (9th Cir. 1978). In this regard, it is the duty of
16 a plaintiff who has filed a *pro se* action to keep the Court
17 apprised of his current address and to comply with the Court's
18 orders in a timely fashion. This Court does not have an
19 affirmative obligation to locate Plaintiff. "A party, not the
20 district court, bears the burden of keeping the court apprised
21 of any changes in his mailing address." Carey v. King, 856 F.2d
22 1439, 1441 (9th Cir. 1988). Plaintiff's failure to keep the
23 Court informed of his new address constitutes failure to
24 prosecute.

25 Rule 41(b) of the Federal Rules of Civil Procedure
26 provides that "[f]or failure of the plaintiff to prosecute or to
27 comply with these rules or any order of court, a defendant may

1 move for dismissal of an action." In Link v. Wabash Railroad
2 Co., 370 U.S. 626, 629-31 (1962), the Supreme Court recognized
3 that a federal district court has the inherent power to dismiss
4 a case *sua sponte* for failure to prosecute, even though the
5 language of Rule 41(b) of the Federal Rules of Civil Procedure
6 appears to require a motion from a party. Moreover, in
7 appropriate circumstances, the Court may dismiss a complaint for
8 failure to prosecute even without notice or hearing. Id. at
9 633.

10 In determining whether Plaintiff's failure to prosecute
11 warrants dismissal of the case, the Court must weigh the
12 following five factors: "(1) the public's interest in
13 expeditious resolution of litigation; (2) the court's need to
14 manage its docket; (3) the risk of prejudice to the defendants;
15 (4) the public policy favoring disposition of cases on their
16 merits; and (5) the availability of less drastic sanctions."
17 Carey, 856 F.2d at 1440 (quoting Henderson v. Duncan, 779 F.2d
18 1421, 1423 (9th Cir. 1986)). "The first two of these factors
19 favor the imposition of sanctions in most cases, while the
20 fourth factor cuts against a default or dismissal sanction.
21 Thus the key factors are prejudice and availability of lesser
22 sanctions." Wanderer v. Johnson, 910 F.2d 652, 656 (9th Cir.
23 1990).

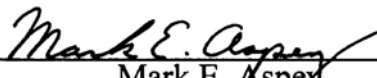
24 Here, the first, second, and third factors favor
25 dismissal of this case. Plaintiff's failure to keep the Court
26 informed of his address prevents the case from proceeding in the
27 foreseeable future. The fourth factor, as always, weighs

1 against dismissal. The fifth factor requires the Court to
2 consider whether a less drastic alternative is available.
3 Without Plaintiff's current address, however, certain
4 alternatives are bound to be futile. Here, as in Carey, "[a]n
5 order to show cause why dismissal is not warranted or an order
6 imposing sanctions would only find itself taking a round trip
7 tour through the United States mail." 856 F.2d at 1441.

8 The Court finds that only one less drastic sanction is
9 realistically available. Rule 41(b) provides that a dismissal
10 for failure to prosecute operates as an adjudication upon the
11 merits "[u]nless the court in its order for dismissal otherwise
12 specifies." In the instant case, the Court finds that a
13 dismissal with prejudice would be unnecessarily harsh. The
14 Complaint and this action will therefore be dismissed without
15 prejudice pursuant to Rule 41(b) of the Federal Rules of Civil
16 Procedure.

17 **IT IS THEREFORE RECOMMENDED that**, pursuant to Rule
18 41(b), Federal Rules of Civil Procedure, this action be
19 dismissed without prejudice for Plaintiff's failure to serve the
20 Defendant in this matter and for Plaintiff's failure to comply
21 with the Court's orders.

22 DATED this 12th day of July, 2010.

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24 _____
25 Mark E. Asper
26 United States Magistrate Judge
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